

PROPOSED RULE FOR DETERMINING SALES AND USE TAX PRIORITY FOR LEASING TRANSACTIONS

Draft 5/22/03 (w/industry recommended revisions)

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A. STATEMENT OF BASIS AND PURPOSE

With respect to leasing transactions, a state's flexibility in specifying ~~the~~ taxable event ~~has~~ occurred can sometimes place an unfair burden on a taxpayer when it relocates leased property from one state to another. Some states accelerate the tax due and require payment on the entire stream of lease payments ~~at inception~~; others tax the lease payments as they ~~become due~~. ~~Some states impose a tax on cost or value of leased property when purchased by the lessor, and may further impose tax when such property is subsequently leased.*~~ Moving leased property from one state to another during the term of the lease can result in the taxpayer paying multiple taxes on the same lease transaction. The purpose of this regulation is to establish standard rules for claiming tax credits to (1) avoid double or multiple taxation of a single leasing transaction, (2) provide a basis for comparing states that apply different forms of transaction tax on a leasing transaction, and (3) allow tax to be collected in instances where the tax imposed by a subsequent state on leasing transactions is levied at a higher rate than the state where the lease originated or the state where the leased property was last used.

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***Are there states that impose tax on the lease transaction based on the cost or value of the underlying property?**

B. SCOPE AND APPLICATION.

(1) These rules apply to all leases of tangible personal property, including, but not limited to, property used for transportation.

(2) These rules apply to all transaction-type taxes levied on leasing transactions by state and local jurisdictions authorized to

impose such taxes, and are also applicable to nominal purchase option leases, finance leases, and conditional sales where such transactions are not distinguished pursuant to state law.

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(3) These rules are to be applied on a transaction-by – transaction, item by item basis, including credits accumulated through lease extensions and/or renewals, and no excess credit resulting from a single leasing transaction may be applied to the tax due on a different leasing transaction. In no event may the credit exceed the total amount of tax due to a subsequent state respecting a lease.

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(4) These rules should not be construed to authorize a state or local jurisdiction to impose transactional taxes on leases of tangible personal property if such transactions are exempt from tax under current state or local law.

(5) For tax paid on a single leasing transaction to the state (“first” state) where 1) the lease originated; 2) the leased property was delivered; and/or 3) subject to the limitations in Section A, where the property was previously used, whichever is or are applicable, the state where the leased property is subsequently located (“subsequent” state) will credit against any transaction tax due to the extent not previously credited in another state:

a. when the first state continues to impose tax on each lease payment after the property has left the state,

(1) If the subsequent state levies tax on each lease payment, credit will be allowed on a monthly basis up to the amount of tax paid to the prior state;

(2) If the subsequent state imposes tax on an accelerated basis, the lessee upon termination of the lease, or upon relocation of the leased property to a third state may apply for a refund up to the amount of tax paid to the first state after relocation of the

property to the subsequent state and before its removal to a third state.

b. where a lessor has paid sales tax on its purchase of tangible personal property intended for lease, the subsequent state will allow a credit for the tax paid until exhausted if:

(1) the tax imposed on the lessor's initial purchase either is to be amortized over the lease term or reimbursed to the lessor by the lessee at lease inception;

(2) the amortized or paid amount of tax is separately stated on the lease contract or worksheet, and

(3) the subsequent state would not tax both the original sale and the subsequent lease payments.

c. where the first state accelerates the tax due based on all or a portion of the transaction's total cost at inception of the lease,

(1) If the subsequent state imposes tax on each lease payment, a per payment credit against tax will be allowed which will be calculated by amortizing over the remaining term of the lease as of the assessment on a straight line basis the total tax paid on an accelerated basis and giving a credit in the amount allocated to each lease payment

(2) If the subsequent state accelerates the tax due, a credit against the subsequent state tax will be allowed which will equal the product of the tax paid to the first state and a fraction the numerator of which is the number of months following movement to the subsequent state remaining in the period covered by the tax assessed by the first state and the denominator

of which is the total number of months in the period covered by the tax assessed by the first state.

d. where the first state imposes an accelerated tax measured by the purchase price or value of the leased property,

(1) If the subsequent state imposes tax on each lease payment, a per payment credit against tax will be allowed which will be calculated by amortizing over the remaining term of the lease at time of imposition on a straight line basis the total tax paid on purchase price or value and giving a credit in the amount allocated to each lease payment

(2) If the subsequent state accelerates the tax due, a credit against the subsequent state tax will be allowed which will be equal to the product of the taxes paid to the first state and a fraction, the numerator of which number of months following movement to the subsequent state remaining in the lease term and the denominator of which is the number of months remaining in the lease term at the time the tax was assessed in the first state.

(Optional language for states party to the Streamlined Sales Tax Agreement:)

C. EFFECT ON OTHER LAW.

(5) These rules are intended to supplement the lease sourcing rules set forth in the Streamlined Sales Tax Agreement. If, in application, any of these supplemental rules operates to adversely affect the sourcing rules under the Agreement, the Agreement's sourcing rules will take precedence.

****Requiring the first state to refund the unused portion of accelerated tax paid when the leased property is relocated to another state will obviate the need for most of the rule's current**

language. What would be the effect in those cases where tax was paid on purchase of the property intended for subsequent lease? Are there any other circumstances where additional clarification might be needed?